



House of Representatives

General Assembly

File No. 16

February Session, 2018

Substitute House Bill No. 5177

House of Representatives, March 20, 2018

The Committee on Government Administration and Elections reported through REP. FOX of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING EMPLOYEE NOTIFICATION OF REQUESTS MADE UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-214 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2018*):

3 (a) Any contract of employment to which the state or a political
4 subdivision of the state is a party shall be deemed to be a public record
5 for the purposes of section 1-210.

6 (b) (1) Whenever a public agency receives a request to inspect or
7 copy records contained in any of its employees' personnel or medical
8 files and similar files, and the agency reasonably believes that the
9 disclosure of such records would legally constitute an invasion of
10 privacy, the agency shall immediately notify in writing [(1)] (A) each
11 employee concerned, provided such notice shall not be required to be
12 in writing where impractical due to the large number of employees

13 concerned, and [(2)] (B) the collective bargaining representative, if any,
14 of each employee concerned.

15 (2) Whenever a public agency receives a request to inspect or copy
16 records contained in any of its employees' personnel or medical files
17 and similar files, and the agency reasonably believes that the
18 disclosure of such records would not legally constitute an invasion of
19 privacy, the agency shall first disclose the requested records to the
20 person making the request to inspect or copy such records and
21 subsequently, within a reasonable time after such disclosure, make a
22 reasonable attempt to send a written or an electronic copy of the
23 request to inspect or copy such records, if applicable, or a brief
24 description of such request, to each employee concerned and the
25 collective bargaining representative, if any, of each employee
26 concerned.

27 (3) Nothing [herein] in this section shall require an agency to
28 withhold from disclosure the contents of personnel or medical files
29 and similar files when it does not reasonably believe that such
30 disclosure would legally constitute an invasion of personal privacy.

31 (c) A public agency which has provided notice under subdivision
32 (1) of subsection (b) of this section shall disclose the records requested
33 unless it receives a written objection from the employee concerned or
34 the employee's collective bargaining representative, if any, within
35 seven business days from the receipt by the employee or such
36 collective bargaining representative of the notice or, if there is no
37 evidence of receipt of written notice, not later than nine business days
38 from the date the notice is actually mailed, sent, posted or otherwise
39 given. Each objection filed under this subsection shall be on a form
40 prescribed by the public agency, which shall consist of a statement to
41 be signed by the employee or the employee's collective bargaining
42 representative, under the penalties of false statement, that to the best of
43 his knowledge, information and belief there is good ground to support
44 it and that the objection is not interposed for delay. Upon the filing of
45 an objection as provided in this subsection, the agency shall not

46 disclose the requested records unless ordered to do so by the Freedom
47 of Information Commission pursuant to section 1-206. Failure to
48 comply with a request to inspect or copy records under this section
49 shall constitute a denial for the purposes of section 1-206.
50 Notwithstanding any provision of this subsection or subsection (b) of
51 section 1-206 to the contrary, if an employee's collective bargaining
52 representative files a written objection under this subsection, the
53 employee may subsequently approve the disclosure of the records
54 requested by submitting a written notice to the public agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	1-214

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill expands requirements under the Freedom of Information Act by requiring agencies to notify employees after certain records are disclosed to a requestor. No fiscal impact is anticipated as any additional complaints filed due to this provision are expected to be minimal.

The Out Years***State Impact:*** None***Municipal Impact:*** None*Sources: Freedom of Information Commission*

OLR Bill Analysis**sHB 5177*****AN ACT CONCERNING EMPLOYEE NOTIFICATION OF REQUESTS MADE UNDER THE FREEDOM OF INFORMATION ACT.*****SUMMARY**

By law, records contained in employee personnel, medical, or similar files are considered public records under the Freedom of Information Act (FOIA) and are subject to disclosure, unless disclosure would constitute an invasion of personal privacy. This bill expands public agencies' duty under FOIA to notify their employees of requests for access to these records.

Under the bill, if a public agency receives a request to inspect or copy records contained in any of its employees' personnel, medical, or similar files, and it reasonably believes that disclosure would not constitute an invasion of privacy, it must (1) first disclose the records and (2) within a reasonable period of time after disclosure, make a reasonable attempt to send to each employee involved and any collective bargaining representative, a written or electronic copy of the request, if applicable, or a brief description of the request.

Under existing law, unchanged by the bill, if an agency receives such a request and it reasonably believes disclosure would constitute an invasion of privacy, it must immediately notify each employee involved and any collective bargaining representative. If the employee or collective bargaining representative objects within a specified period of time, the agency must deny access to the records, unless ordered to disclose them by the Freedom of Information Commission.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2018

BACKGROUND***Personnel, Medical, or Similar Files***

Connecticut courts have considered which records in employee personnel, medical, or similar files are subject to disclosure under FOIA and which, if disclosed, would constitute an invasion of personal privacy. Generally, they have held that time and attendance records, time off requests, and reports of investigations of employee misconduct are disclosable. On the other hand, tax and social security information is exempt and medical information is typically exempt (see e.g., *Director, Retirement & Benefits Services Division v. Freedom of Information Commission*, 256 Conn. 764 (2001); *Department of Public Safety v. Freedom of Information Commission*, 242 Conn. 79 (1997); *Kureczka v. Freedom of Information Commission*, 228 Conn. 271 (1994); *Perkins v. Freedom of Information Commission*, 228 Conn. 158 (1993)).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 16 Nay 0 (03/09/2018)